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ANOTHER TESTATOR FOILED. — If a man should speak or write of his "niece Eliza Waterhouse" anywhere but in his last will, and, upon looking into the matter, it appeared that he had no niece, but that his wife had two grandnieces of the name, the one legitimate, the other, illegitimate, living in the house with him and his caretaker in his old age, one would surely inquire farther before feeling certain that he meant the legitimate niece. It is to be regretted that the English Court of Appeal has considered itself so root-bound by authority that it must needs deny farther investigation of the surrounding circumstances, and give the wife's legitimate grandniece the bequest. *Re Fish, Ingham v. Rayner*, 38 Sol. L. J. 307.

CODIFICATION. — In re-enacting § 17 of the Statute of Frauds in the English Sale of Goods Act, 1894, it is declared that "there is an acceptance . . . when the buyer does any act in relation to the goods which recognizes a pre-existing contract of sale, whether there be an acceptance in performance of the contract or not." It would seem that the interpretation of this provision of the Act of 56 & 57 Victoria may go on as merily as has that of the Act of 29 Charles II.

"No contract . . . shall be allowed to be good" has been changed to "A contract . . . shall not be enforceable by action." Formerly a carrier could set up the statute against a consignee suing for lost goods. *Coombs v. Ry. Co.*, 3 H. & N. 510. If the law of such cases is not to be changed, the interpretation of this phrase of the Act must needs be vigorously done. But if the law is changed, there need be no complaint, for the setting up of the Statute of Frauds by third persons is no very commendable practice. Brown on Frauds, 4th ed., § 138 j.

ANTICIPATORY BREACH. — Lord Justice Kay in *Synge v. Synge* (1894), 1 Q. B. 466, has added a stone to the cairn in honor of Lord Cockburn's "inchoate right" in a plaintiff to sue on a promise before the defendant's performance is due. The action was on an agreement of the defendant to leave at his death to the plaintiff a life interest in certain lands owned by him, in consideration of her promise to marry him. Having induced the object of his affection to unite her lot with his, this gentleman conveyed to his daughters the land in question, doubtless hoping to leave any difficulties to his executors. But the lady brought her action immediately, perhaps wisely distrusting the compensation she might get from her husband's property at his decease, and the court gave her the present value of the life interest.

The case shows the nature of the doctrine quite free from the consideration involved usually in the question whether the plaintiff is obliged to go on to perform in order to get his right of action. It is now evident that in England, by a contract, one binds one's self to quite a different thing from the mere performance, — that is, to a course of conduct from the time of promise till that of performance which shall make the promise reasonably probable of fulfilment. It is barely possible in the case in point that the defendant might have caused his daughters to reconvey to him, and so fulfilled his contract. In fact, in all the cases on this subject, the breach has ordinarily been no more than a strong probability that defendant could not perform. Had the question come up for

the first time in a case like the present, it could hardly be possible that the additional liabilities to a contract, imposed by the doctrine, should not have been observed.

MALICIOUS INTERFERENCE WITH CONTRACT. — The doctrine of a case is often accepted by the courts before its true bearing is thoroughly understood, and the result is that a period of uncertainty and confusion follows that is only ended when some clear-minded judge works out the theory and properly adjusts it. The doctrine of *Lumley v. Gye* has had such a course. It is no longer a novelty to find it followed, but when the reasons for it are so well stated as they are in *Van Horn v. Van Horn et al.* (28 Atl. Rep. 669) it should be noted. One passage is especially worth quoting. "While a trader," says Van Syckel, J., "may lawfully engage in the sharpest competition, . . . when he oversteps that line and commits an act with the malicious intent of inflicting injury upon his rival's business, his conduct is illegal, and if damage results from it, the injured party is entitled to redress. Nor does it matter whether the wrong-doer effects his object by persuasion or by false representation. The courts look through the instrumentality or means used, to the wrong perpetrated with the malicious intent, and base the right of action upon that." The whole opinion will prove a very valuable one in putting the doctrine on a more satisfactory and more intelligible basis.

LIBEL — AGAINST BRITISH MUSEUM. — Mrs. Biddulph Martin (Victoria Woodhull) must seek alleviation for the outrage to her reputation at more tender hands than those of Baron Pollock. In the trial of the suit instituted by her husband and herself against the trustees of the British Museum (*Martin et ux. v. Trustees British Museum*, 10 T. L. R. 338), for having given out to general readers the story of the Beecher-Tilton case, a verdict was found for the defendant, and though the case has been appealed, it is hardly probable that there will be a change, at least in the law. The jury seem to have gone wild on the questions put to them, and it is hard to find meaning in their answers; but at least they returned that neither the defendants nor their servants knew or ought to have known of the libellous matter that they gave out. Assuming that by "ought to have known" they mean a reasonably faithful discharge of the duties put upon them by Parliament, the case is brought quite in line with the authority cited by Baron Pollock, *Emmens v. Pottle*, 16 Q. B. D. 354 (in the Court of Appeal, 1885). That was a case of a newsdealer who unwittingly sold libellous matter from his stand and was held not to have published it.

It cannot be said that the offence in libel and slander is the influence of the defendant's opinion on the plaintiff's reputation; it is rather the injury to the plaintiff's reputation in any way by the dissemination of falsehood. Therefore cases like *Emmens v. Pottle* would seem to be capable of explanation only on the failure to connect defendant with the falsehood. Certainly in actions on the case generally, if a defendant can show that no ordinary man would have anticipated the result which actually occurred, it is a good defence. Here the finding of the jury seems to show such a defence, and there is no reason why the defend-